

SENATE BILL NO. 224

INTRODUCED BY K. TOOLE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A REALTY TRANSFER TAX; ALLOCATING TAX
5 PROCEEDS TO THE STATE AND TO THE LOCAL GOVERNMENT WHERE THE TRANSFER OCCURRED;
6 REQUIRING THAT TAX PROCEEDS BE USED FOR LOCAL PLANNING ACTIVITIES, THE AGRICULTURAL
7 HERITAGE PROGRAM, AND AFFORDABLE HOUSING; PROVIDING THAT DOCUMENTS TRANSFERRING
8 TITLE TO REAL PROPERTY MAY NOT BE RECORDED UNTIL THE TAX IS PAID; PROVIDING FOR
9 PENALTIES AND INTEREST FOR NONPAYMENT OF THE TAX; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Realty Transfer
15 Tax Act".

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17 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], the following definitions
18 apply:

19 (1) "Person" includes an individual, corporation, partnership, other business organization, trust,
20 fiduciary, agent, or any other party presenting a document for recordation.

21 (2) "Planning activities" means any activity conducted pursuant to Title 76, chapters 1 and 2.

22 (3) "Real property" includes:

23 (a) land;

24 (b) growing timber;

25 (c) buildings, structures, fixtures, fences, and improvements affixed to land.

26 (4) "Transfer" means an act of the parties or of the law by which the title to real property is
27 conveyed from one person to another.

28 (5) "Value" means:

29 (a) in the case of a transfer of interest in real property, other than a nonarm's-length transfer with
30 nominal consideration or a transfer without stated consideration, the amount of the full actual

1 consideration paid or to be paid, including the amount of any lien or liens on the real property; or

2 (b) in the case of a nonarm's-length transfer market, value as described in 15-8-111.

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4 NEW SECTION. **Section 3. Realty transfer tax.** A realty transfer tax of 1% on the value declared
5 in the certificate required under 15-7-305 that is in excess of \$100,000 is imposed upon the transfer of
6 title to real property. The tax is on the person seeking to record the transfer of title to the real property.
7 The person has the burden of claiming and demonstrating the right to any exemption to the tax provided
8 in [section 4] prior to recording the transfer.

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10 NEW SECTION. **Section 4. Exempt transactions.** The tax that may be imposed by [sections 1
11 through 6] may not apply to:

12 (1) an instrument recorded prior to [the effective date of this act];

13 (2) the sale of agricultural land when the land is used for agricultural purposes;

14 (3) a transfer solely to provide or release security for a debt or obligation;

15 (4) the United States, this state, or any instrumentality, agency, or subdivision of the United
16 States or this state;

17 (5) an instrument that, without added consideration, confirms, corrects, modifies, or supplements
18 a previously recorded instrument;

19 (6) a transfer pursuant to a court decree of partition;

20 (7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships,
21 or other business entities;

22 (8) a transfer by a subsidiary corporation to its parent corporation without actual consideration
23 or in sole consideration of the cancellation or surrender of subsidiary stock;

24 (9) a transfer of decedents' estates;

25 (10) a transfer of a gift;

26 (11) a transfer between husband and wife or parent and child with only nominal actual
27 consideration for the transfer;

28 (12) an instrument the effect of which is to transfer the property to the same party or parties;

29 (13) a sale for delinquent taxes or assessments, a sheriff's sale, a bankruptcy action, or a mortgage
30 foreclosure; or

(14) a transfer made in contemplation of death.

NEW SECTION. Section 5. Collection of tax -- appeals -- interest and penalty -- statute of

limitations -- lien on transferred property. (1) Before a deed or instrument evidencing a transfer of title subject to the tax imposed by [section 3] may be recorded, the treasurer of the county where the real property or any portion of the real property is located shall calculate and collect the amount of tax due.

(2) If the taxpayer contests the tax assessment or the denial of an exemption from the tax by the treasurer, the taxpayer may appeal the tax assessment or the denial of the exemption to the department. The appeal is governed by the provisions of 15-1-211.

(3) If the treasurer determines that the amount of tax due is greater than the amount collected, the treasurer shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. A penalty of 10% of the unpaid tax must be assessed. In addition, any deficiency assessment bears interest until paid at the rate of 1% a month or fraction of a month, computed from the date on which the transfer was recorded.

(4) The taxpayer may seek a review of the determination by the department pursuant to 15-1-211.

(5) The deficiency may not be assessed unless notice of the additional tax proposed to be assessed is mailed within 5 years from the date on which the transfer was recorded. If the certificate filed is fraudulent, the 5-year period does not begin until discovery of the fraud.

(6) The treasurer may collect any additional tax, penalty, and interest pursuant to 15-16-102.

(7) The additional tax, penalty, and interest are a lien against the real property that was transferred and may be collected and enforced in the manner as other tax liens on real property are enforced. The use of one method of collection does not preclude the use of an alternative method of collection.

NEW SECTION. Section 6. Distribution of tax proceeds. (1) The county treasurer shall forward

one-third of the tax collected under [section 5] in the preceding month to the treasurer of the local government in which the real property is located to be used for planning activities.

(2) The county treasurer shall forward the remaining two-thirds of the tax collected under [section 5] to the state treasurer for deposit of:

(a) one-half of the amount in the affordable housing revolving loan account provided for in 90-6-133; and

1 (b) the remaining one-half of the amount in the account provided for in 2-15-3322 to be used for
2 the agricultural heritage program. If the program terminates, the amount allocated to the agricultural
3 heritage program must be distributed as provided in subsection (1).

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5 NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 6] are intended to be
6 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 6].

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8 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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